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Attorneys for Plaintiff
Columbia Sportswear North America, Inc.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

COLUMBIA SPORTSWEAR NORTH AMERICA, INC., an Oregon corporation,

Plaintiff,

v.

SEIRUS INNOVATIVE ACCESSORIES, INC., a Utah corporation, **VENTEX CO., LTD.**, a foreign company, **MICHAEL J. CAREY**, an individual, **WENDY M. CAREY**, an individual, **ROBERT (BOB) MURPHY**, an individual, **SCOTT DENIKE**, an individual, **KYUNG-CHAN GO**, an individual, and **MAN-SIK (PAUL) PARK**, an individual,

Defendants.

Case No. 3:19-cv-137-SI

PLAINTIFF COLUMBIA SPORTSWEAR NORTH AMERICA, INC.'S RESPONSE IN OPPOSITION TO DEFENDANTS SEIRUS INNOVATIVE ACCESSORIES, INC., MICHAEL J. CAREY, WENDY M. CAREY, ROBERT MURPHY AND SCOTT DENIKE'S MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT

PRELIMINARY STATEMENT

Columbia submits this Opposition to the Seirus Defendants' motion for a second extension of time to file its Answer. Columbia appreciates the Court granted the request in response to the Seirus Defendants' amended motion and memorandum but nonetheless submits

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this Opposition to correct misrepresentations made to the Court and to document Columbia's opposition and the grounds therefore.

OPPOSITION

Plaintiff Columbia Sportswear North America, Inc. ("Columbia") opposes the motion of Defendants Seirus Innovative Accessories, Inc., Michael J. Carey, Wendy M. Carey, Robert Murphy, and Scott DeNike (collectively, "Seirus") for an extension of time to file their responsive pleading to Columbia's Second Amended Complaint.

I. BACKGROUND CONCERNING SEIRUS ATTEMPTS TO DELAY THIS CASE

Columbia filed its Complaint in this case nearly a year ago, in January 2019. Seirus made an appearance promptly thereafter. (ECF 10-13.) Following no fewer than seven pre-answer motions to dismiss or strike the pleading (ECF 59, 64, 77, 101, 103, 110, 111), the Court issued an order on December 2, 2019 finding that Columbia's SAC was sufficiently pleaded. (ECF 156.) Thus, Seirus's answer to the SAC was due December 16. Fed. R. Civ. P. 12(a)(4)(A).

Seirus then set in motion a series of events intended to delay this case.

First, on December 6, it filed an unopposed motion to extend by 28 days the time to file the Answer. (ECF 163.) Seirus did not disclose to Columbia at that time its intention to file two appeals. That fact was only disclosed to Columbia a few days later, *after* Columbia agreed to a 28-day extension. (*See* ECF 165, ECF 182, p. 3.) Immediately following the Court's grant of Seirus's request, Seirus filed its two appeals, along with three separate motions to stay this action—one in this Court and two before the Ninth Circuit. (ECF 182; *see also* ECF 196, p. 2.)

Now, on the eve of its Answer being due following its first extension, it asks for a further, 23-day extension based on the pendency of those appeals. (ECF 199.)

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II. SEIRUS'S MOTION SHOULD BE DENIED

Seirus knew when it asked for its first extension that it would be filing appeals and motion(s) to stay this case. Yet it agreed that a 28-day extension was appropriate, and Columbia consented. But rather than use those 28 days to work on its Answer, as it committed to this Court, it has filed a raft of motions and briefs in this Court and the Ninth Circuit to delay the case—which briefs total nearly 100 pages. (ECF 182, 193, 199, 200, *Columbia Sportswear North Am., Inc. v. Seirus Innovative Accessories, Inc.*, Appeal No. 19-36047, ECF 6 (9th Cir., Dec. 23, 2019), *In re Seirus Innovative Accessories, Inc.*, Appeal No. 19-73247, ECF 1.3 (9th Cir., Dec. 20, 2019).)

Additionally, Seirus's arguments for the extension are redundant of the arguments it made to the Court to secure the *last* extension. For example, it argues here that the SAC "runs to nearly 100 pages and contains 459 paragraphs, amounting to hundreds of discrete factual allegations," that Seirus needs "adequate time to complete their investigation," and that "[a]n extension of 23 days will permit the Seirus Defendants' adequate time to prepare and file a thorough Answer." (ECF 199, p. 3.) But those are *exactly the same arguments* it made to gain the first extension. Specifically, Seirus argued that the SAC "consist[s] of 8 separate counts, 99 pages and 459 paragraphs," that with "a large number of detailed, factual allegations, responding to the complaint will involve significant investigation and 14 days does not provide sufficient time to respond," and that "[g]ranting the motion will allow the Seirus Defendants a reasonable time to investigate the allegations in the complaint and respond accordingly. . ." (*Id.*)

Moreover, Seirus has not been using the time it previously asked for to "investigate" the "detailed, factual allegations" underlying the SAC, as it represented. For example, just two days ago, Seirus asked, in a request that was clearly intended to fabricate a basis for an extension, that Columbia "provide Seirus with all the documentation underlying the factual assertions made in

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[the SAC], including the invoices, emails, and other documentation related to those assertions." (Ex.[1] 1.) But Seirus had apparently forgotten that ***Columbia delivered this documentation to Seirus seven months ago***. Specifically, the Court will recall that Columbia asked for leave to file a second amended complaint to include Restricted Facts that were subject to protective orders in the underlying Seirus litigation and the two IPRs. (ECF 76.) At a hearing last April, Seirus asked the Court to order Columbia "to identify those specific facts" on which Columbia's SAC would be based. (Ex. 2, p. 29.) The Court ordered, "I do think that [Columbia] should tell Seirus what [its] additional facts are." (*Id.*, p. 44.)

Following that hearing, Seirus asked Columbia *nine separate times* to disclose the Restricted Facts it intended to rely on in support of the SAC, and to produce all of the evidentiary support. (Exs. 3, 4, 5, 6, 7, 8, 9, 10, 11.) But Columbia needed Ventex's authorization. After Ventex gave permission to share those facts and documents with Seirus (Exs. 12, 13), on June 13, 2019, Columbia produced to Seirus every document relevant to the IPRs and underlying the allegations in the SAC, including no less than:

- All 26,687 pages of documents produced by Ventex in the IPRs
- Ventex's privilege log
- All of Ventex's interrogatory responses
- Transcripts of all depositions
- All exhibits that were filed under seal
- All declarations
- Columbia's expert report

[1] "Ex. ___" refers to the exhibits to the Declaration of David Aldred, submitted commensurately herewith.

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- The sealed PTAB Final Written Decision
- And all other documents filed under seal by either party

(Ex. 14 & Aldred Decl. ¶ 17.) Columbia accompanied that with a 40-page document detailing all of the Restricted Facts that Columbia intended to rely on in the upcoming SAC. (*Id.*; Ex. 15.) But Seirus apparently *completely forgot* that it had all of this documentation in its possession—information that it urgently demanded Columbia produce on numerous occasions and which it obviously has not examined. In its original version of this Motion, Seirus falsely represented that Seirus "did not have access to" the documentary support for the SAC and that Columbia "refused to provide it." (Dkt. 199, p. 3.) Seirus apparently failed to remember that it had asked for and received all of this documentation seven months ago. (Ex. 16.) After Seirus filed its Motion, Columbia reminded Seirus of that fact, sending it a copy of the transmittal email.[2] (*Id.*, Aldred Decl. ¶ 18.) Seirus then promptly filed its "Amended Motion," deleting its assertion that it could not file the Answer because Columbia was withholding documents, but alleging instead that it has been "working diligently to investigate Columbia's factual allegations"—apparently with the documentation that it did not recall that it had. (ECF 200, p. 3.)

It is clear that Seirus has not spent the last 28 days "working diligently to investigate Columbia's factual allegations," as it represented to this Court that it would. (*Cf. id.*) ***It hasn't even opened the documents in its possession for seven months that it needed in order to do so***. It instead spent that time filing numerous motions to extend and delay the case. The Motion should be denied on that basis alone.

But there are other reasons why a further extension should be denied. For example,

[2] This apparently set off a frenetic investigation within Seirus last night to quickly assess the 30,000 pages of documents it claimed to have been "diligently . . . investigat[ing]" for the past month but forgot that it had. (*See* Ex. 17; *cf.* ECF 200, p. 3.)

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Seirus's Answer will help the parties and the Court in terms of scheduling and planning for the contested issues in the case. Whether Seirus asserts any counterclaims, which facts it admits are not disputed, and what defenses it asserts, may impact significantly discovery and the court's consideration of other proceedings in this case. Moreover, the individual defenses that the Seirus Defendants assert will undoubtedly inform the character and scope of issues that Seirus now seeks to present as justifying a stay of all proceedings.

Finally, Seirus argues that the late entry of Ventex into the case warrants a further extension of time for Seirus to respond to the SAC, but fails to explain why or how. Regardless what Ventex may do, Seirus has known about the allegations in the Complaint for a year, has been working with the SAC since July 2019 (ECF 91), and has had more the ample time to draft and submit its Answer. Ventex's recent appearance has no bearing on Seirus's ability to timely answer the SAC.

III. CONCLUSION

Clearly, Seirus's Motion is yet another attempt to stay and delay the case, part and parcel with its three motions to stay to date. The Motion should be denied.

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Dated this 9th day of January, 2020.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: *s/ Nika Aldrich*

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2020, I caused to be served the foregoing **PLAINTIFF COLUMBIA SPORTSWEAR NORTH AMERICA, INC.'S RESPONSE IN OPPOSITION TO SEIRUS'S MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT** on:

By electronic service via the Court's CM/ECF system:	Renée E. Rothauge Harry B. Wilson Markowitz Herbold PC 455 SW Broadway, Suite 1900 Portland, OR 97201 Christopher S. Marchese Seth M. Sproul Oliver J. Richards Tucker N. Terhufen John W. Thornburgh Fish & Richardson PC 12390 El Camino Real San Diego, CA 92130 *Attorneys for Defendants Seirus Innovative Accessories, Inc., Michael J. Carey, Wendy M. Carey, Robert (Bob) Murphy and Scott Denike* Kurt M. Rylander Mark E. Beatty Rylander & Associates, P.C. 406 W. 12th Street Vancouver, WA 98660 *Attorneys for Defendant Ventex Co., Ltd.*

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